

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0685-05
Bill No.: SCS for HB 240
Subject: Boards; Commissions, Committees, and Councils; Crimes and Punishment; Drugs and Controlled Substances; General Assembly; Health Care; Health Care Professionals; Health Public
Type: Original
Date: May 3, 2019

Bill Summary: This proposal modifies provisions relating to controlled substances.

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | | |
|--|---|---|---|---|
| FUND AFFECTED | FY 2020 | FY 2021 | FY 2022 | Fully Implemented (FY 2029) |
| General Revenue | Less than (\$238,473 to \$263,290) | (Less than \$189,474 to \$270,274) | (Less than \$229,789 to \$311,397) | (Less than \$2,298,442 to \$2,385,937) |
| Total Estimated Net Effect on General Revenue | Less than (\$238,473 to \$263,290) | (Less than \$189,474 to \$270,274) | (Less than \$229,789 to \$311,397) | (Less than \$2,298,442 to \$2,385,937) |

| ESTIMATED NET EFFECT ON OTHER STATE FUNDS | | | | |
|--|------------|------------|------------|--------------------------------|
| FUND AFFECTED | FY 2020 | FY 2021 | FY 2022 | Fully Implemented (FY 2029) |
| | | | | |
| | | | | |
| Total Estimated Net Effect on Other State Funds | \$0 | \$0 | \$0 | \$0 |

Numbers within parentheses: () indicate costs or losses. This fiscal note contains 20 pages.

| ESTIMATED NET EFFECT ON FEDERAL FUNDS | | | | |
|---|------------|------------|------------|-----------------------------|
| FUND AFFECTED | FY 2020 | FY 2021 | FY 2022 | Fully Implemented (FY 2029) |
| | | | | |
| | | | | |
| Total Estimated Net Effect on <u>All</u> Federal Funds | \$0 | \$0 | \$0 | \$0 |

| ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE) | | | | |
|--|----------------------|--------------------|--------------------|-----------------------------|
| FUND AFFECTED | FY 2020 | FY 2021 | FY 2022 | Fully Implemented (FY 2029) |
| General Revenue | Up to 2.2 FTE | Up to 2 FTE | Up to 2 FTE | Up to 2 FTE |
| | | | | |
| Total Estimated Net Effect on FTE | Up to 2.2 FTE | Up to 2 FTE | Up to 2 FTE | Up to 2 FTE |

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

| ESTIMATED NET EFFECT ON LOCAL FUNDS | | | | |
|-------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------------|
| FUND AFFECTED | FY 2020 | FY 2021 | FY 2022 | Fully Implemented (FY 2029) |
| Local Government | \$0 to Unknown | \$0 to Unknown | \$0 to Unknown | \$0 to Unknown |

FISCAL ANALYSIS

ASSUMPTION

§§21.790 - Task Force on Substance Abuse Prevention and Treatment

Officials from the **Missouri Senate (SEN)** assume no fiscal impact when task force meetings are held in Jefferson City during the legislative session. The draft legislation does not allow for reimbursement of travel to attend meetings. However, if meetings are held during the legislative interim there would be a negative fiscal impact to reimburse 6 senators for round trip mileage to attend meetings. In summary, it will cost the senate just under \$600.00 per meeting, assuming they are held in Jefferson City.

| EXPENSE | TOTAL AVERAGE MILES* | RATE PER MILE** | NUMBER OF APPOINTEES | EST TOTAL PER MEETING |
|-----------------------------|----------------------------|--------------------|-------------------------|--------------------------|
| Mileage - Senators | 265 | 0.37 | 6 | 588.30 |
| TOTAL FISCAL IMPACT: | | | | 588.30 |

This estimate is based on the assumption that meetings are held in Jefferson City during the interim, that the average of the total round trip miles for current sitting senators, 34, and current rate as set by the Office of Administration.

In response to similar legislation, officials from the **Missouri House of Representatives** assumed joint committee expenses are typically covered by the Senate using their Joint Contingent Expenses appropriation.

Oversight notes that the SEN does not include the representatives or public members in their estimated costs. Therefore, Oversight will assume the average of the total round trip miles for current sitting Representatives and unknown mileage for public appointees, and current rate as set by the Office of Administration as reflected in table below:

| EXPENSE | TOTAL AVERAGE MILES* | RATE PER MILE** | NUMBER OF APPOINTEES | EST TOTAL PER MEETING |
|-----------------------------|----------------------------|--------------------|-------------------------|--------------------------|
| Mileage - Representatives | 268 | 0.37 | 6 | 594.96 |
| Mileage - Public | Unknown | 0.37 | 4 | Unknown |
| TOTAL FISCAL IMPACT: | | | | 594.96 |

ASSUMPTION (continued)

Including the 4 public members (16 total), **Oversight** will assume a cost of approximately \$1,500 per meeting held outside of session. Oversight will further assume three meetings per year for this task force, one during session and two during the interim. Therefore, Oversight will assume a cost of \$3,000 per year for mileage reimbursement for committee members.

Oversight notes the proposal states the task force shall be assisted by legislative personnel as is deemed necessary to assist the task force in the performance of its duties. Oversight will assume staffing will be filled by existing legislative personnel, therefore, Oversight assumes no costs other than reimbursable expenses by the committee.

Officials from the **Department of Health and Senior Services** - Division of Community and Public Health (DCPH) state the proposed legislation would create a Task Force on Substance Abuse Prevention and Treatment. Subsection four of the above referenced section would allow the task force to request assistance or information from state departments, agencies, board, commissions, and offices. DHSS assumes that it would receive requests to provide information to the task force, which would place a requirement on staff time to gather and disseminate such information. Such information gathering would exist within the normal ebb and flow of the department's responsibilities and therefore would be a zero fiscal impact. The department anticipates being able to absorb these costs. However, until the FY20 budget is final, the department cannot identify specific funding sources.

§195.010 - Medical Marijuana

In response to a similar provision in HCS for SCS for SB 6, officials from the **Office of State Public Defender (SPD)** stated for §195.010, if passed, this legislation would have a positive impact on the workload of SPD. Possession, manufacture, distribution, etc. of cannabis would no longer be unlawful. These are currently offenses that the SPD uses resources to defend but with the passage of this legislation, would no longer need to.

The exact positive impact is difficult to predict because cases are tracked by statutory offense and most drug offenses are not limited to marijuana. For purposes of this fiscal note, SPD will use 25 percent of the cases as relating to marijuana, although in this instance it could be less than the 25 percent reduction because this bill does not eliminate all marijuana charges.

The chart below shows the number of “drug” related offenses opened by SPD’s Trial Division in FY2018 under the statutes that are being changed.

ASSUMPTION (continued)

| <u>Offense</u> | <u>Cases</u> | <u>Reduction of</u> | <u>Cases</u> |
|---|--|--------------------------------|---------------------|
| 30 D = A/B Felony - Drug | <u>595</u> | <u>25%</u> | <u>149</u> |
| 35 D = C/D/F Felony - Drug | <u>11,643</u> | <u>25%</u> | <u>2,911</u> |
| <u>Total</u> | <u>12,238</u> | | <u>3,060</u> |
| <u>Total Non-Probation Cases = 47,938</u> | <u>Percentage of Total No-Probation Violation Cases = 6.38%</u> | | |
| <u>65 F = Felony Probation Violations</u> | <u>12,974</u> | | |
| <u>65 M = Misdemeanor Probation Violations</u> | <u>2,483</u> | | |
| <u>Total</u> | <u>15,457</u> | <u>PV's Using 6.38%</u> | <u>986</u> |
| <u>Grand Total Misdemeanors and Felonies</u> | <u>27,695</u> | | <u>4,046</u> |

According to “The Missouri Project” (RubinBrown, June 2014), the relevant workload standards are A/B felonies, 47.6 hours per case; C/D felonies, 25.0 hours per case; misdemeanors, 11.7 hours per case; and probation violations, 9.8 hours per case. The workload standards include only case related tasks over which an attorney has some control. The study excludes in-court and travel time and thereby reflects a conservative estimate.

Applying those workload standards to the 4,046 cases would require 89,530 $[(149 \times 47.6) + (2,911 \times 25) = (986 \times 9.8)]$ attorney hours. With 2,080 hours per attorney each year, this represents the work of 43 attorneys $(89,530 / 2,080)$.

Therefore, despite the positive impact on the workload of the SPD, this reduction in attorney time would not allow the SPD to reduce its workforce and, therefore, would not translate into an actual cost savings.

Oversight assumes the SPD would not realize an overall savings from this proposal but instead would reallocate resources within its operations. Therefore, Oversight will reflect a \$0 impact for fiscal note purposes.

ASSUMPTION (continued)

§§195.015 and 195.017 - Controlled substances

Officials from the **Department of Health and Senior Services (DHSS)** state the proposed legislation requires the promulgation of rules and regulations, which include the following duties (not all inclusive): establish guidelines, implement strategies, make evidence-based system changes, and create policy recommendations. The DHSS, Office of General Counsel will need an additional 0.1 FTE for an attorney (salary of \$64,500 per year) to perform the research necessary to ensure the new guidelines and information for this proposed legislation has been properly vetted and implementation is completed quickly and with fiscal responsibility. Due to current workload being at maximum limits, these costs cannot be absorbed. Costs associated with this portion of the proposal to General Revenue (GR) are estimated to be \$12,133 for FY 2020.

Oversight assumes 0.1 FTE would not be provided fringe benefits and the state would only pay Social Security and Medicare benefits of 7.65 percent.

Oversight assumes since DHSS states their workload currently being at maximum limits and the responsibility to perform the research necessary to ensure the new guidelines and information for this proposed legislation has been properly vetted and implementation is completed quickly and with fiscal responsibility, Oversight will range the cost of the partial FTE from \$0 to DHSS' estimate less fringe benefits over 7.65%.

DHSS states 195.015.4 of the proposed legislation requires the Division of Regulation and Licensure, Section for Health Standards and Licensure, Bureau of Narcotics and Dangerous Drugs (BNDD) to promulgate emergency rules within 30 days of publication in the federal register each time the Drug Enforcement Administration (DEA) designates a substance as a controlled substance or reschedules or deletes a substance. The DEA makes such changes an average of 20 times annually.

It is assumed it will take a Health and Senior Services Manager approximately 16 hours to promulgate each emergency rule change. Based on 2,080 working hours per year, this would require 0.15 FTE to assume the duties set forth in the proposed section (16 hours X 20 rule changes ÷ 2,080 hours per year = 0.15) for a total personal service annual cost of \$9,915 (\$66,098 X 0.15).

The DHSS anticipates being able to absorb these costs. However, until the FY20 budget is final, the department cannot identify specific funding sources.

ASSUMPTION (continued)

Oversight obtained information from the DHSS regarding the U.S. Department of Justice, Drug Enforcement Administration (DEA) Diversion Control Division. Oversight determined that in the past 5 years (2014 - 2018), the DEA has taken scheduling actions on substances/controlled substances 99 times (average 19.8 actions per year). Based on this information the DHSS would need 0.15 FTE to manage the DEA's average annual change in substance/controlled substance schedules. Oversight assumes the additional duties can be performed within current funding/staffing levels.

§§195.060, 195.550, 196.100, 221.111, 338.015, 338.055 and 338.056 - Prescriptions to be issued electronically

Officials from the **Department of Health and Senior Services (DHSS), Division of Regulation and Licensure (DRL)** state §195.550 of the proposed legislation requires that all prescriptions, beginning January 1, 2021, be made electronically, unless certain exceptions are met. It is assumed that the DRL's Section for Health Standards and Licensure's (HSL) Bureau of Narcotics and Dangerous Drugs (BNDD) will assume the duties set forth in the proposed section. BNDD will require additional staff to implement the legislation (hired September 1, 2019).

One Health Program Representative II with an annual salary of \$35,990 (salary is based on the average starting salary in the division with pay plan) will be needed to perform the following duties: provide education and communication regarding compliance with electronic prescriptions for controlled substances; assist in the receiving of applications for waivers, reviewing and making determinations, and issuing waivers.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect the costs provided by DHSS for fiscal note purposes.

Officials from the **Office of Administration (OA), Information Technology Services Division (ITSD)/DHSS** state modification of the existing MOHWORX application enabling a prescribing practitioner to request a DHSS waiver or renewal of a waiver for the requirement of electronic prescribing will be required. Assuming receipt from DHSS of documented business process for requesting a waiver or renewal of a waiver, ITSD/DHSS would utilize a project team consisting of a Project Manager, Business Analyst, Architect, and Application Developer to analyze, design, develop, and implement modifications to the MOHWORX application. Assuming a full-time project team for four (4) months, no additional maintenance costs anticipated as it is modification to an existing system.

ITSD assumes that every new IT project/system will be bid out because all their resources are at full capacity. It is estimated IT consultants will be needed at a rate of \$75 per hour for 820.8 hours for a total cost of \$61,560 (\$75 * 820.8) to the General Revenue (GR) Fund.

ASSUMPTION (continued)

Oversight notes ITSD assumes that every new IT project/system will be bid out because all their resources are at full capacity. For this proposal, ITSD assumes modifications to the existing MOHWORX application will be required. ITSD estimates the project would take 820.8 hours at a contract rate of \$75 per hour for a total cost to the state of \$61,560 in GR funds. Oversight notes that an average salary for a current IT Specialist within ITSD is \$51,618, which totals roughly \$80,000 per year when fringe benefits are added. Assuming all ITSD resources are at full capacity, Oversight assumes ITSD may (instead of contracting out the programming) hire additional IT Specialists to perform the work required by this proposal. Therefore, Oversight will range the fiscal impact from the cost of contracting out the work (\$61,560 in FY 2020) to hiring 1 ($\$61,560 / \$75 / 2,080 \text{ hours} = 0.39$ rounded up) additional FTE IT Specialists (at roughly \$80,000 each, per year) to complete the system update. Oversight assumes the additional FTE would be permanent staff will range costs for FY 2021 and 2022 from \$0 to the cost of an additional IT Specialist.

§195.805 - No marketing of medical marijuana products that appeal to persons under 18 years of age

Officials from the **Department of Health and Senior Services** assumes §195.805.3 states "Any licensed or certified entity regulated by the department of health and senior services pursuant to Article XIV of the Missouri Constitution found to have violated the provisions of this section shall be subject to department sanctions, including an administrative penalty, in accordance with the regulations promulgated by the department pursuant to Article XIV of the Missouri Constitution." This language requires the department to seek sanctions for a new item, beyond what Article XIV requires in accordance with the regulations promulgated by the department pursuant to Article XIV of the Missouri Constitution. This will include the following duties (but not all inclusive): establish guidelines, implement strategies, make evidence-based system changes, and create policy recommendations. DHSS, Office of the Counsel will need an additional 0.1 FTE for an attorney (salary of \$64,500 per year to perform the research necessary to ensure the new guidelines and information for this proposed legislation has been properly vetted and implementation is completed quickly and with fiscal responsibility. Due to current workload being at maximum limits, these costs cannot be absorbed.

Oversight assumes 0.1 FTE would not be provided fringe benefits and the state would only pay Social Security and Medicare benefits of 7.65 percent.

§195.805 prohibits marijuana for medical use to be designed, produced, or marketed in a manner that is designed to appeal to persons under 18 years of age. It provides for enforcement actions on the part of the DHSS. The department expects to absorb these costs in the normal ebb and flow of its operations.

ASSUMPTION (continued)

Oversight notes provisions of 195.805.3 provides for departmental sanctions, including administrative penalties, for any licensed or certified entity regulated by the Department of Health and Senior Services that designs, produces, or markets medical marijuana products that would appeal to persons under eighteen years of age. Administrative penalties are distributed to school districts based on the location of the entity receiving the penalty. It is unknown whether penalties will be imposed or how much in penalties may be distributed to school districts. Therefore, Oversight will present penalties to school districts as \$0 to Unknown, for fiscal note purposes.

§§565.021, 579.015, 579.065, 579.068 - Increase in criminal penalties

Officials from the **Department of Corrections (DOC)** state the bill makes changes to the schedule of controlled substances and adds drug offenses to four criminal statutes.

§565.021 - 2nd Degree Murder

DOC notes this section adds the offense of manufacturing, delivering or distributing a schedule I or II controlled substance that caused or was a contributing factor in the death of a person. The number of deaths from drug overdoses is a national concern and Missouri reported 1,367 deaths from drug overdoses during 2017 (**Oversight** determined this is the most recent data available from the Centers for Disease Control and Prevention (CDC)). At present it is unknown the number of convictions of the providers of the controlled substance, but the DOC is estimating one per year will receive a prison sentence. It is also likely that the offender would be sentenced to a drug offense but the conviction will be concurrent with the murder conviction.

In FY18 the average sentence for 2nd degree murder was 21.0 years and offenders will serve 85% of their time before parole. The expected time served is 17.9 years which is beyond the 10 year budget horizon. In FY2029 the population increase is estimated to be 10.

§579.015 - Possession of a controlled substance

DOC notes this section increases the felony class from D to C if the offender is employed as an emergency care provider or other care assistant. The US Bureau of Labor Statistics reported in 2017 personal care assistants comprised 1.42% of the occupational workforce so the DOC is estimating that 1.42% of offenders convicted of drug possession will be sentenced for the class C offense. The offense is estimated to increase the average sentence from 4.3 years to 7 years (the average sentence for drug distribution). There were 1,176 prison admissions (FY 18) for drug possession of which 17 will be sentenced for a class C felony. Time served for the class D offense in FY18 is 28.9% and 33.5% for the class C. The change will add 2 offenders to the population in FY22.

ASSUMPTION (continued)

Oversight obtained information from the Bureau of Labor Statistics (May 2017 National Occupational Employment and Wage Estimates (most recent available)). The Personal Care Aids employment category (Occupation code 39-9021) employs 2,035,610 persons nationwide and the total employment for all occupational categories is 142,549,250. Therefore, personal care aids comprise 1.428% of the occupational workforce.

§579.065 - 1st Degree Drug Trafficking

DOC officials state this section of the proposal adds Fentanyl to the list of controlled substances. If the amount is from 10 to 60 grams, it is a class B felony and becomes a class A if it is a greater amount. The legislation will result in some drug distribution offenses being sentenced as 1st degree drug trafficking. In FY18, 20% of drug distribution new admissions were estimated to be for Fentanyl and there were 9 new prison admissions for 1st degree drug trafficking. Applying the 20% expansion factor results in an expected increase of 2 additional new admissions who would have been sentenced for drug distribution. The average sentence will increase from 7.0 years to 9.4 years and the percent of time served from 33.5% to 42%. The prison population is expected to increase by 2 in FY24 and stabilize at 4 in FY25.

§579.068 - 2nd Degree Trafficking

This section adds Fentanyl to the list of controlled substances if the amount is greater than 10 grams. In FY18, 23% of drug possession new admissions are estimated to have been for fentanyl, and there were 34 new admissions for 2nd degree drug trafficking. The impact is expected to be 5 offenders charged with 2nd degree drug trafficking instead of drug possession. The average sentence will increase from 4.3 years to 7 years and the average time served will increase from 28.9% to 33.5%. The population will increase by 4 in FY22 and stabilize at 9 in FY23.

There is no impact on probation sentencing from these statute changes because the probation term will be unchanged.

The **total** impact of the legislation is an increase in the prison population by 24 in FY29 and an increase of 5 in the field (probation) population.

§§556.061 and 579.020 - Distribution of heroin

DOC officials state the proposed legislation defines Delivery of a Controlled Substance as a Dangerous Felony (RSMo 556.061) if the substance is a mixture or contains a detectable amount of heroin. The offense of Delivery of a Controlled Substance (RSMo 579.020) becomes a class B felony, from a Class C felony, if the substance contains a detectable amount of heroin which

ASSUMPTION (continued)

could increase the sentence length for those convicted.

The DOC estimates in FY 18 that there were 62 new admissions for the distribution of heroin (15% of new admissions for drug distribution). The average sentence was 7 years and the percent of sentence served before first release was 33.5%. If the sentence was enhanced to a Class B, the average sentence would be 8.9 years (the average sentence of those sentenced when the offense was a Class B) and the offenders would serve 85% before first release. The impact includes an estimate of 35% of the remaining sentence after the first release for the incarceration of parole returns.

New admissions in FY18 for the distribution of heroin

| Drug Distribution Admissions | Estimated Heroin percent | Estimated Heroin Admissions | Avg. Sentence (yrs) | | Percent Time Served | Time to 1st Release | |
|------------------------------|--------------------------|-----------------------------|---------------------|---------|---------------------|---------------------|--------------|
| | | | Class C | Class B | | Class C | Dangerous |
| | | | Yrs | Yrs | | Yrs | Felony (85%) |
| 413 | 15% | 62 | 7.0 | 8.9 | 33.5% | 2.3 | 7.6 |

The full impact is estimated to be an increase in the prison population of 260 in FY 28 and a reduction in the parole population of 143 because more of the sentence is served in prison. The impact will begin after the offenders serving the current sentence would be released (FY 23).

The combined impact for §§556.061, 565.021, 579.015, 579.020, 579.065, and 579.068 is as follows:

| | # to prison | Cost per year | Total Costs for prison | # to probation & parole | Cost per year | Total cost for probation and parole | Grand Total - Prison and Probation (includes and 2% inflation) |
|---------|-------------|---------------|------------------------|-------------------------|---------------|-------------------------------------|--|
| Year 1 | 1.0 | (\$6,287) | (\$5,239) | 0 | absorbed | \$0 | (\$5,239) |
| Year 2 | 2.0 | (\$6,287) | (\$12,825) | 0 | absorbed | \$0 | (\$12,825) |
| Year 3 | 8.0 | (\$6,287) | (\$52,328) | (5) | absorbed | \$0 | (\$52,328) |
| Year 4 | 20.0 | (\$6,287) | (\$133,436) | (16) | absorbed | \$0 | (\$133,436) |
| Year 5 | 85.0 | (\$6,287) | (\$578,446) | (77) | absorbed | \$0 | (\$578,446) |
| Year 6 | 150.0 | (\$6,287) | (\$1,041,203) | (136) | absorbed | \$0 | (\$1,041,203) |
| Year 7 | 213.0 | (\$6,287) | (\$1,508,079) | (193) | absorbed | \$0 | (\$1,508,079) |
| Year 8 | 276.0 | (\$6,287) | (\$1,993,213) | (190) | absorbed | \$0 | (\$1,993,213) |
| Year 9 | 283.0 | (\$6,287) | (\$2,084,641) | (139) | absorbed | \$0 | (\$2,084,641) |
| Year 10 | 284.0 | (\$6,287) | (\$2,133,847) | (139) | absorbed | \$0 | (\$2,133,847) |

ASSUMPTION (continued)

Oversight does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC's impact for fiscal note purposes.

Officials from the **Office of State Public Defender (SPD)** state, for the purpose of this proposed legislation, they cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with new crime of trafficking fentanyl. The Missouri State Public Defender System is currently providing legal representation in caseloads in excess of recognized standards.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation in all cases where the right to counsel attaches.

In Fiscal Year 2018, SPD's Trial Division opened 155 "trafficking drug" related cases.

Oversight notes over the last three fiscal years, the SPD has lapsed a total of \$152 of General Revenue appropriations (\$0 out of \$36.4 million in FY 2016; \$2 out of \$28.0 million in FY 2017; and \$150 out of \$42.5 million in FY 2018). Therefore, Oversight assumes the SPD is at maximum capacity and the increase in workload resulting from this bill cannot be absorbed within SPD's current resources.

Adding one additional Assistant Public Defender 1 (APD) with a starting salary of \$47,000, will cost approximately \$74,500 per year in personal service and fringe benefit costs. One additional APD II (\$52,000 per year; eligible for consideration after 1 year of successful performance at APD I) will cost the state approximately \$81,000 per year in personal service and fringe benefit costs. When expense and equipment costs such as travel, training, furniture, equipment and supplies are included, **Oversight** assumes the cost for a new APD could approach \$100,000 per year.

Oversight assumes the SPD cannot absorb the additional caseload that may result from this proposal within their existing appropriation. With drug-related cases a large portion of SPD's workload, Oversight will assume the changes in this proposal could result in costs exceeding \$100,000 per year to the Office of the State Public Defender.

Bill as a whole:

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet

ASSUMPTION (continued)

these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could require additional resources.

Officials from the **Joint Committee on Administrative Rules (JCAR)** stated the legislation is not anticipated to cause a fiscal impact to JCAR beyond its current appropriation.

Oversight assumes JCAR will be able to administer any rules resulting from this proposal with existing resources.

Officials from the **Office of Prosecution Services** assume the proposal will have no fiscal impact on their organization. The creation of a new crime creates additional responsibilities for county prosecutors which may in turn result in additional costs which are difficult to determine.

Oversight notes that the **Department of Public Safety-Missouri State Highway Patrol, Office of the Governor, Legislative Research, Department of Public Safety-Alcohol and Tobacco Control, Department of Insurance, Financial Institutions and Professional Registration, and Office of State Courts Administrator** each have stated the proposal would not have a direct fiscal impact on their organizations. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

FISCAL IMPACT -
State Government

**GENERAL
 REVENUE FUND**

Costs - Joint
Contingency
Expenses - for
mileage
reimbursement for
members of the Task
Force on Substance
Abuse Prevention
and Treatment
 (\$21.790) p. 4

FY 2020
 (10 Mo.)

FY 2021

FY 2022

Fully
 Implemented
 (FY 2029)

(\$3,000)

(\$3,000)

(\$3,000)

(\$3,000)

Costs - DHSS
 (\$195.015) p. 4

Personal service
 (0.1 Attorney)

\$0 to (\$5,375)

\$0

\$0

\$0

Fringe benefits

\$0 to (\$411)

\$0

\$0

\$0

Equipment and
 expense

\$0 to (\$4,069)

\$0

\$0

\$0

Total Costs - DHSS

\$0 to (\$9,855)

\$0

\$0

\$0

FTE Change -
 DHSS

0 to 0.1 FTE

0 FTE

0 FTE

0 FTE

Costs - DHSS
 (§§195.060,
 195.550, 196.100,
 221.111, 338.015,
 338.055 and
 338.056) p. 6

Personal Service

(\$29,992)

(\$36,350)

(\$36,713)

(\$39,362)

Fringe Benefits

(\$19,649)

(\$23,688)

(\$23,798)

(\$25,650)

Equipment and

Expense

(\$19,033)

(\$13,611)

(\$13,950)

(\$16,583)

Total Costs - DHSS

(\$68,674)

(\$73,649)

(\$74,461)

(\$81,583)

FTE Change -
 DHSS

1 FTE

1 FTE

1 FTE

1 FTE

FISCAL IMPACT -
State Government
 (continued)
GENERAL
REVENUE FUND
 (Continued)

Fully
 Implemented
 (FY 2029)

Costs - OA, ITSD
 (§§195.060,
 195.550, 196.100,
 221.111, 338.015,
 338.055 and
 338.056) p. 7
 System updates
 (ranged from
 contracting out the
 programming
 (\$61,560) to hiring
 an additional 1 FTE
 IT Specialist)
 FTE Change - OA,
 ITSD

| | | | |
|-----------------------------------|--------------------------|--------------------------|--------------------------|
| <u>(\$61,560 to \$66,667)</u> | <u>\$0 or (\$80,800)</u> | <u>\$0 or (\$81,608)</u> | <u>\$0 or (\$87,495)</u> |
| 0 or 1 FTE | 0 or 1 FTE | 0 or 1 FTE | 0 or 1 FTE |

Costs - DHSS
 (§195.805) p. 8
 Personal service
 (0.1 Attorney)
 Fringe benefits
 Equipment and
 expense
 Total Costs - DHSS
 FTE Change -
 DHSS

| | | | |
|-------------------------|-------|-------|-------|
| \$0 to (\$5,375) | \$0 | \$0 | \$0 |
| \$0 to (\$411) | \$0 | \$0 | \$0 |
| <u>\$0 to (\$4,069)</u> | \$0 | \$0 | \$0 |
| <u>\$0 to (\$9,855)</u> | \$0 | \$0 | \$0 |
| 0 to 0.1 FTE | 0 FTE | 0 FTE | 0 FTE |

Costs - DOC
 (§§556.061,
 565.021, 579.015,
 579.020, 579.065,
 579.068) p. 11
 Increase in
 incarceration
 expenditures

| | | | |
|-----------|------------|------------|---------------|
| (\$5,239) | (\$12,825) | (\$52,328) | (\$2,113,847) |
|-----------|------------|------------|---------------|

FISCAL IMPACT -
State Government
 (continued)
GENERAL
REVENUE FUND
 (Continued)

Fully
 Implemented
 (FY 2029)

Costs - SPD
 (§§579.0065 and
 579.068) p. 12

Personal service,
 fringe benefits and
 equipment and
 expense for
 additional APD(s)

(Less than
\$100,000)

(Less than
\$100,000)

(Less than
\$100,000)

(Less than
\$100,000)

ESTIMATED NET
EFFECT ON THE
GENERAL
REVENUE FUND

(Less than
\$238,473 to
\$263,290

(Less than
\$189,474 to
(\$270,274)

(Less than
\$229,789 to
(\$311,397)

(Less than
\$2,298,442
(\$2,385,937)

Estimated Net FTE
 Effect on the
 General Revenue
 Fund

Up to 2.2 FTE

Up to 2 FTE

Up to 2 FTE

Up to 2 FTE

| | | | | |
|-------------------------|----------|---------|---------|-------------|
| <u>FISCAL IMPACT -</u> | | | | Fully |
| <u>Local Government</u> | FY 2020 | | | Implemented |
| | (10 Mo.) | FY 2021 | FY 2022 | (FY 2029) |

**LOCAL
GOVERNMENT -
SCHOOL
DISTRICTS**

| | | | | |
|------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| <u>Income - School</u> | | | | |
| <u>Districts</u> | | | | |
| (\$195.805.3) p. 9 | <u>\$0 to Unknown</u> | <u>\$0 to Unknown</u> | <u>\$0 to Unknown</u> | <u>\$0 to Unknown</u> |

**ESTIMATED NET
EFFECT ON
LOCAL
GOVERNMENTS
- SCHOOL
DISTRICTS**

| | | | |
|-----------------------|-----------------------|-----------------------|-----------------------|
| <u>\$0 to Unknown</u> | <u>\$0 to Unknown</u> | <u>\$0 to Unknown</u> | <u>\$0 to Unknown</u> |
|-----------------------|-----------------------|-----------------------|-----------------------|

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill creates the Task Force on Substance Abuse Prevention and Treatment. The committee is made up of six members of the House of Representatives appointed by the Speaker, six members of the Senate appointed by the President Pro Tem, and four members appointed by the Governor.

The task force must meet at least once during each legislative session. The committee will conduct hearings on current and future drug and substance abuse, explore solutions to substance abuse issues, and draft or modify legislation as necessary to reach the goals of finding and funding education and treatment solutions to combat drug and substance use and abuse. The committee will send a report of recommendations for legislation to the Governor and the General Assembly each year.

This act also modifies several provisions relating to controlled substances, including: (1) updating the schedules of controlled substances; (2) the sale of certain medical marijuana products; (3) manufacture, delivery, or distribution of drugs with death resulting; (4) unlawful possession of a controlled substance by certain providers and employees; and (5) trafficking of fentanyl and carfentanil.

FISCAL DESCRIPTION (continued)

UPDATING THE SCHEDULES OF CONTROLLED SUBSTANCES (Sections 195.015 and 195.017)

Under this act, if a substance is designated, rescheduled, or deleted as a controlled substance under federal law, the Department of Health and Senior Services shall promulgate emergency rules to implement such change within 30 days of publication of the change in the Federal Register, unless the Department objects to such change. When the Department promulgates emergency rules under this act, the rules may remain in effect until the legislature concludes its next regular session following the imposition of the rules.

Additionally, this act updates the schedules of controlled substances in Missouri to mirror the most recent update to the schedules in 19 CFR 30-1.002.

SALE OF CERTAIN MEDICAL MARIJUANA PRODUCTS (Section 195.805)

This act prohibits the sale of medical marijuana products that are designed, produced, or marketed in a manner to appeal to persons under 18 years of age, including, candies, gummies, lollipops, cotton candy, or products in the shape of a human, animal, or fruit. Any medical marijuana licensed or certified entity regulated by the Department of Health and Senior Services found to have violated this act shall be subject to Department sanctions, including an administrative penalty.

MANUFACTURE, DELIVERY, OR DISTRIBUTION OF DRUGS WITH DEATH RESULTING (Section 565.021)

This act modifies the crime of murder in the second degree by adding language making a person who knowingly and unlawfully manufactures, delivers, or distributes a Schedule I or II controlled substance, excluding marijuana for medical use, and thereafter the controlled substance is the proximate cause of the death of another person who uses or consumes it. It shall not be a defense that the defendant did not directly deliver or distribute the controlled substance to the decedent.

UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE BY CERTAIN PROVIDERS AND EMPLOYEES (Section 579.015)

Currently, unlawful possession of a controlled substance, except 35 grams or less of marijuana or any synthetic cannabinoid, is a Class D felony. This act adds an enhanced penalty if the defendant is an emergency care provider, a home health care employee, a hospice employee, an in-home care employee, a personal care assistant, or any other individual providing home health or personal care assistance services to patients. If such defendant knowingly and unlawfully possesses a controlled substance belonging to the patient or another member of the patient's

FISCAL DESCRIPTION (continued)

household, the offense shall be a Class C felony.

TRAFFICKING OF FENTANYL AND CARFENTANIL (Sections 579.065 and 579.068)

Finally, this act adds to the offense of trafficking drugs in the first degree knowingly distributing, delivering, manufacturing, producing, or attempting to do so more than 10 milligrams but less than 50 milligrams of fentanyl or carfentanil, or any derivative thereof, or any combination thereof, or any mixture containing fentanyl or carfentanil, as a Class B felony and a Class A felony when the amount is 50 milligrams or more.

Additionally, this act adds to the offense of trafficking drugs in the second degree knowingly possessing, purchasing, or attempting to do so more than 10 milligrams but less than 50 milligrams of fentanyl or carfentanil, or any derivative thereof, or any combination thereof, or any mixture containing fentanyl or carfentanil, as a Class C felony and a Class B felony when the amount is 50 milligrams or more.

INCREASED PENALTIES FOR THE DISTRIBUTION OF HEROIN (Sections 556.061 and 579.020)

Under current law, the distribution of heroin is not distinguished from the distribution of most other controlled substances, and is a class C felony. This act provides that the distribution of any substance containing a detectable amount of heroin is a class B felony.

This act provides that the distribution of heroin is a dangerous felony as defined by statute. Any offender who has been found guilty of a dangerous felony and is committed to the Department of Corrections shall be required to serve a minimum prison term of eighty-five percent of the sentence imposed by the court or until the offender attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Missouri Senate
Department of Health and Senior Services
Department of Corrections
Department of Public Safety - Missouri State Highway Patrol
Joint Committee on Administrative Rules
Missouri Office of Prosecution Services
Office of State Courts Administrator
Office of Secretary of State
Office of State Public Defender
Office of the Governor
Legislative Research
Department of Public Safety - Alcohol and Tobacco Control
Department of Insurance, Financial Institutions and Professional Registration



Kyle Rieman
Director
May 3, 2019

Ross Strobe
Assistant Director
May 3, 2019